

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5214 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? NO

2. To be referred to the Reporter or not? NO

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3. Whether Their Lordships wish to see the fair copy of the judgement? NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? NO

5. Whether it is to be circulated to the Civil Judge?
NO

SHRI AMBIKANIKETAN TRUST

Versus

STATE OF GUJARAT

Appearance:

MS VP SHAH WITH MR MS RAO for Petitioner

MR DN PATEL ADDL.GOV'T.PLEADER for Respondent No. 1

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 30/10/96

ORAL JUDGEMENT

The petitioner by this petition calls in question the order dt. 23rd December 1993 passed by the Deputy Collector declaring the land bearing Survey No. 583 admeasuring 8,296 sq.mts. in excess of the ceiling limit and the decision of the competent authority conveyed vide letter dt. 11th July 1996 expressing inability to review his own order passed on 15th January 1987 u/s 34 of the Urban Land Ceiling Act.

2. A few facts may be stated, the petitioner is a public charitable trust. Over and above the religious

activities and performance of ceremonies, one of the objects of the petitioner trust is to run Care-centre for the old people aged more than 65 years who have been deserted, or are economically and socially very weak and helpless. With a view to promote the object of the trust, a Care-centre in the name and style Shri Ambicaniketan Vruddhashram was set up at the cost of Rs.35,000,00 on the land admeasuring 15,000 sq.mts. at village Vesu of Choryasi Taluka in Surat District. For this Vruddhashram, the trust was in need of the land. Darabsha Faramji was the owner of the land bearing Survey No. 583 admeasuring 8296 sq.mts. The trust negotiated and agreed to purchase the land in question. Darabsha Faramji obtained necessary permission from the collector to sell the agricultural land. Atlast on 3rd February, 1976, before the Urban Land Ceiling Act (for short 'the Act') came into force, the sale deed was got executed and was registered on 5th February 1976. Thereafter on 17th February 1976, the Act came into force. Darabsha Faramji was having many other lands and properties. He,therefore, filled up necessary forms under Sec. 6(1) of the Act. The competent authority undergoing necessary formalities and treating the land in question to be of Darabsha Faramji, declared that Darabsha having the land in question and other lands in excess of the Ceiling limits. According to him, there was nothing on record before him to accept the case of sale having been already made in favour of the petitioner.He was simply supplied with the xerox copy of the Sale Deed. He placed no reliance on that copy and ignored the sale of land made in favour of the petitioner, and held that considering his total holdings, the land Survey No.583 was in excess of the ceiling limit. Accordingly, he passed the order. Thereafter the petitioner- trust whose interest was adversely affected filed revision application before the State. The State expressed its inability to adjudicate upon the question raised by writing a letter dt. 11th July 1996 stating that because of certain legal constraints, it was not able to review the order passed by the competent authority,and it could be done only by the competent court. It is against that order, the present petition has been preferred calling the legality and proprietaries of the order in question.

3. The only question that arises for consideration, is whether the land in question can be said to be the land of Darabsha Faramji or of the petitioner trust when the Act, on 17th February 1976, came into force; for solution thereof is having governing effect. On the date when the Act came into force, the persons holding the land in excess of the ceiling limit were required to be

acquired and distributed to the weaker section of the society. Before me, a copy of the registered sale deed is produced at Annexure C to which there is no dispute. It appears that the sale deed was executed on 3rd February 1976 and whereby Darabsha Faramji sold out the land bearing Survey No. 583 to the present petitioner. That sale deed came to be registered in the office of the Sub Registrar, Surat on 5th February 1976. From that day Darabsha Faramji ceased to be the owner and the petitioner trust became the owner in the eye of law. When that is so, the land ought not to have been considered to be the land of Darabsha Faramji for the purpose of computation of the ceiling limit; the same ought to have kept out of consideration while computing the ceiling limit. Apparently, the competent authority has, by not excluding the land in question, fell into error which is required to be rectified.

4. It may incidently be stated that the trust may have the properties more than the ceiling limit but in view of Sec.19 of the Act, the land held by the trust is exempted from the operation of the Act. The question, therefore, whether the applicant is having the excess land or not is not and can never be the relevant consideration. It is hence not open to the State to contend that the trust is having more land than the ceiling limits.

5. For the aforesaid reason, it is clear that the competent authority fell into the error in including the land in question for the purpose of computing the ceiling limit of the properties held by Darabsha Faramji. The petition is, therefore, allowed. The order dt. 23rd December 1993 passed by the Deputy Collector declaring the land in question to be the excess land is hereby quashed and set aside and the order passed by the competent authority on 15th January 1987 copy of which is produced at Annexure G is hereby restored. No costs in the facts of the case. Rule is made absolute accordingly.
